

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Kiddy City, Inc. and Elizabeth Deblecourt. Case 13–CA–36827.

August 10, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Upon a charge filed by Elizabeth Deblecourt, an individual, on February 19, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on April 3, 1998, against Kiddy City, Inc., the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Although the Respondent filed an answer to the complaint, it withdrew that answer on July 2, 1998.

On July 10, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On July 14, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 28, 1998, the Respondent filed a response confirming that its answer had been withdrawn.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Here, although the Respondent initially did file an answer, the Respondent withdrew its answer to the complaint on July 2, 1998. The Respondent's withdrawal of its answer to the complaint has the same effect as a failure to file an answer, i.e., all allegations in the complaint must be considered to be true. See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, in the absence of good cause being shown otherwise, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Chicago, Illinois, has been engaged in the business of operating a day care center for children. During the 1997 calendar year the Respondent, in conducting its business operations within

the State of Illinois, derived annual revenues in excess of \$250,000 and purchased and received at its Chicago, Illinois facility goods valued in excess of \$5000 from other enterprises located within the State of Illinois, each of which other enterprises had received these goods directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About January 9, 1998, the Respondent discharged and has since refused to reinstate its employees Elizabeth Deblecourt, Janet LiVolsi, Kim Lustig, and Michelle Shuminas because these employees engaged in protected, concerted activity within the meaning of Section 7 of the Act by filing claims against the Respondent with the Illinois Department of Labor around December 16, 1998, for illegal insurance deductions.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) by discharging Elizabeth Deblecourt, Janet LiVolsi, Kim Lustig, and Michelle Shuminas, we shall order the Respondent to offer them full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the unlawful action against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify the discharged employees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Kiddy City, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or refusing to reinstate its employees because they engage in protected, concerted activity within the meaning of Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of the date of this Order, offer Elizabeth Deblecourt, Janet LiVolsi, Kim Lustig, and Michelle Shuminas, full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Elizabeth Deblecourt, Janet LiVolsi, Kim Lustig, and Michelle Shuminas whole for any loss of earnings and other benefits suffered as a result of the unlawful discharges, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, expunge from its files any and all references to the unlawful discharges, and, within 3 days thereafter, notify the discharged employees in writing that this has been done.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 9, 1998.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 10, 1998

Sarah M. Fox,	Member
---------------	--------

Peter J. Hurtgen,	Member
-------------------	--------

J. Robert Brame III,	Member
----------------------	--------

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
 To form, join, or assist any union
 To bargain collectively through representatives of their own choice
 To act together for other mutual aid or protection
 To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or refuse to reinstate our employees because they engage in protected, concerted activity within the meaning of Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days of the date of the Board's Order, offer Elizabeth Deblecourt, Janet LiVolsi, Kim Lustig, and Michelle Shuminas full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Elizabeth Deblecourt, Janet LiVolsi, Kim Lustig, and Michelle Shuminas whole for any loss of earnings and other benefits suffered as a result of the unlawful discharges, with interest.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any and all references to the unlawful discharges, and, within 3 days thereafter, notify the discharged employees in writing that this has been done

KIDDY CITY, INC.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."